

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRENDA BESSON,

Plaintiff,

v.

PRIYAM SETHI, ONIK
CHOWDHURY, FAMILY
HEALTHCARE NETWORK,

Defendants.

Case No. 1:23-cv-01701-HBK

ORDER TO PRO SE LITIGANT OF
DISPOSTIVE MOTION

(Doc. No. 3)

ORDER VACATING INITIAL
SCHEDULING CONFERENCE AND
RELATED DEADLINES

(Doc. No. 2)

On December 8, 2023, Plaintiff's pro se action seeking damages for personal injury stemming from medical or dental functions performed by Defendants was removed from the Tulare Superior Court pursuant to the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(c). (Doc. No. 1). The same day, new case documents issued, including: (1) Order Setting Mandatory Scheduling Conference; (2) Notice of Direct Assignment to United States Magistrate Judge; (3) Consent/Decline of U.S. Magistrate Judge Jurisdiction form; and (4) Informational Order. (See Doc. No. 2, 2-1, 2-2, 2-3).

On December 15, 2023, Defendants Dr. Priyam Sethi, Dr. Onik Chowdhury (named in the Complaint as "Dr. Onik Chowdhury") and Family Healthcare Network filed a motion seeking (1) substitution of the United States of America as defendant pursuant to 42 U.S.C. § 233(c) and (2) dismissal of this action pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, on


1 the grounds that Plaintiff failed to exhaust her administrative remedies. (Doc. No. 3, "Motion").
2 As of the date of this Order, Plaintiff has not filed an amended complaint or otherwise filed an
3 opposition to the Motion and the time to do so has expired. *See* Fed. R. Civ. P. 15(a)(1)(B)
4 (affording party 21 days to file an amended complaint in response to motion to dismiss under
5 Rule 12(b)); *see also* Local Rule 230(c) (affording party 14 days to file an opposition to a motion,
6 the failure of which may construed by the Court as a non-opposition).

7 Considering Plaintiff's pro se status, the Court sua sponte will grant Plaintiff a limited
8 extension of time to file either an amended complaint, if appropriate, or an opposition to the
9 Motion. Alternatively, because no Defendant has answered or filed a motion for summary
10 judgment, Plaintiff may instead seek to voluntarily dismiss this action *without prejudice* by filing
11 a Notice of Voluntary Dismissal under Federal Rule of Civil Procedure 41(a)(1)(A).

12 ACCORDINGLY, it is **ORDERED**:

- 13 1. **No later than February 2, 2024**, Plaintiff shall either file an amended complaint or
14 opposition to Defendants' Motion (Doc. No. 3). In the alternative, Plaintiff may file a
15 Notice of Voluntary Dismissal under Rule 41(a)(1)(A).
- 16 2. If Plaintiff fails to respond to this Order, the Court will deem Defendants' Motion
17 (Doc. No. 3) unopposed and submitted.
- 18 3. The Court VACATES the Initial Scheduling Conference set for March 7, 2024 and all
19 related deadlines.
- 20 4. The Parties shall return the Consent/Decline of U.S. Magistrate Judge Jurisdiction
21 form issued with the New Case Documents no later than February 2, 2024.

22
23 Dated: January 16, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE